

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 253 OF 2006.

Mrs.Mariyum W/o.Sayyad Patel.

... Appellant.

Versus.

Pimpri-Chinchwad Municipal
Corporation and others.

... Respondents.

Shri S.V.Pitre for the Appellant.

Shri N.V.Walawalkar, Senior Counsel for the Respondent
No.1.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2006.

P.C.:

1. Heard Shri Pitre appearing for the Appellant and

Shri Walawalkar, Senior Counsel for the Respondent No.1.
The Appellant/Plaintiff filed a suit for declaration
that the notice issued under section 53(1) of the
Maharashtra Regional and Town Planning Act, 1966 (herein
after referred to as the said Act of 1966) by the
respondent was malafide, illegal, and not binding on the
Plaintiff. The notice relates to a structure situated
on a land bearing Survey No.77, Hissa No.1/1 situated at
Pimple Gurav, Taluka Haveli, Dist. Pune. During the
pendency of the suit, the structure was demolished and
therefore by way of amendment prayer d(i) was
incorporated in the plaint for mandatory injunction
directing the Respondents to reconstruct the suit
structure.

2. The trial Court decreed the suit. One of the contentions raised in the written statement by the Respondents was that the structure was affected by a proposed Development Plan Road. The trial Court on the basis of the evidence on record held that in fact the structure was not affected by the proposed development plan road. The Appellate Court has interfered and has set aside the decree passed by the trial Court.

3. Shri Pitre submitted that though an application was made by the Appellant for regularisation of the structure under the provisions of the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act 2001, (hereinafter referred to as the said Act of 2001) the rejection of the application was not communicated to the Applicant. He stated that for the first time a copy of the communication intimating rejection was placed on record of the trial Court. He submitted that the evidence of the officer of Respondent No.1 clearly shows that the suit structure was not affected by the development plan road. He submitted that in any case even assuming that the suit structure was affected by the D.P.Road, no steps were taken by the Respondent-Corporation for acquisition. He, therefore, submitted that the trial Court rightly passed a decree for mandatory injunction.

4. I have considered the submissions. In the

plaint the substantive challenge was to the notice issued under section 53 of the said Act of 1966. Paragraph 4 of the plaint itself records that in the notice under section 53 it was alleged that the unauthorised construction was made by the Appellant and therefore, he was directed to remove the construction within one month. The fact that the construction was made without obtaining lawful permission appears to be more or less admitted as the Appellant himself claimed regularisation under the said Act of 2001. The grievance of the Appellant is that the rejection of the proposal of the regularisation was not communicated to her. But the fact remains that the communication of rejection was placed on record by the Respondents. There is no challenge in the present suit to the said communication rejecting the prayer for regularisation.

5. It is thus clear that the structure which was demolished was admittedly unauthorised. Notice under section 53 of the said Act of 1966 proceeds on the footing that the construction was unauthorised. Therefore, there is no error in the view taken by the Appellate Court that a mandatory injunction could not have been granted. Relief of injunction under the Specific Relief Act, 1963 is purely discretionary. When the construction which was demolished was admittedly illegal, the Appellate Court was right in setting aside the decree passed by the trial Court of mandatory

injunction directing the Respondent No.1- Corporation to reconstruct the structure. The proposal for regularisation is already rejected. There is no error in the view taken by the Appellate Court. No substantial question of law arises. Second Appeal is dismissed.

6. A request is made by Shri Pitre that the Respondents be directed to maintain status-quo as of today for a reasonable period. The prayer is opposed by the learned Counsel for the Respondent No.1. Considering the facts and circumstances of the case, the parties will maintain status-quo as of today for a period of four weeks from today.

Judge.